

PUBLIC ACTS, 1999

CHAPTER NO. 506

HOUSE BILL NO. 1590

By Representative Hargrove

Substituted for: Senate Bill No. 1859

By Senator Haynes

AN ACT to amend Tennessee Code Annotated, Section 56-7-1206, relative to uninsured motorist coverage.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 56-7-1206, is amended by adding the following as newly designated subsections:

(___) Notwithstanding subsection (c), if a party or parties alleged to be liable for the bodily injury or death of the insured offers the limits of all liability insurance policies available to such party or parties in settlement of the insured's claim, the insured or the insured's personal representative may accept the offer, execute a full release of the party or parties on whose behalf the offer is made and preserve the right to seek additional compensation from the insured's uninsured motorist insurance carrier upon agreement of the insured or the insured's personal representative to submit the insured's uninsured motorist claim to binding arbitration of all issues of tort liability and damages, provided:

(1) (A) The offer must be for the sum of the limits of all liability insurance policies providing coverage to the party or parties on whose behalf the offer is made and in an aggregate amount which is less than the uninsured motorist coverage applicable to the bodily injury or death of the insured; or

(B) If, by payments to other injured parties, the limits of all liability insurance policies providing coverage to the party or parties on whose behalf the offer is made have been reduced to an amount which is less than the limits of the insured's uninsured motorist coverage, the offer must be for the total amount of coverage that remains available to the party or parties on whose behalf the offer is made.

(2) If the settlement does not release all parties alleged to be liable to the insured, arbitration of the uninsured motorist claim shall not be conducted until the claims against all such other parties have been fully and finally disposed of by settlement, final judgment or otherwise.

(___) Parties proposing to accomplish a settlement pursuant to this section shall comply with the following requirements and conditions:

(1) Upon request, the insured or the insured's personal representative or attorney shall provide the liability insurance company or companies providing

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coverage to the party or parties to be released, the name and address of the insurance company or companies providing the insured with uninsured motorist coverage, the policy number(s) and the limits of uninsured motorist coverage available to the insured; and

(2) The liability insurance company or companies providing coverage to the party or parties to be released shall give written notice of the offer to the insured's uninsured motorist insurance carrier or its attorney, provide verification of the coverage upon request and confirm to the uninsured motorist insurance carrier or its attorney that the party or parties to be released will agree in writing to cooperate with the uninsured motorist insurance carrier in connection with the arbitration of the uninsured motorist claim, provided the uninsured motorist insurance carrier will agree to waive its subrogation rights against the party or parties to be released; and

(3) The insured or the insured's personal representative or attorney shall give written notice to the uninsured motorist insurance carrier or its attorney of the insured's intent to accept the offer and agreement to submit the uninsured motorist claim to binding arbitration; and

(4) After receipt of both of the notices referred to in paragraphs (2) and (3), the uninsured motorist insurance carrier shall have thirty (30) days to give notice to its insured or the insured's personal representative or attorney and the liability insurance carrier(s) or their attorneys that it consents to the settlement; that it will agree to binding arbitration of the insured's uninsured motorist claim and will waive its subrogation rights against the party or parties to be released in exchange for their written agreement to cooperate in connection with the arbitration; and

(5) Upon receipt of the notice required by paragraph (4), the insured may proceed to execute a release of the party or parties on whose behalf the offer was made and upon execution of the release, receive payment of the settlement proceeds; and

(6) The notices required by paragraphs (2), (3) and (4) shall be given by certified mail, return receipt requested, or by some other method pursuant to which the sender receives written verification that the notice was received.

(___) (1) The arbitration provided for in this section shall be conducted pursuant to this section and pursuant to the Uniform Arbitration Act, T.C.A. §§ 29-5-301, et seq. and §§ 29-5-101, et seq.

(2) The arbitrator shall be selected by agreement of the parties. Notwithstanding T.C.A. § 29-5-304, if the parties are unable to agree, either party may request a judge of a court of record in the county in which the arbitration is pending to designate three (3) potential arbitrators. The parties shall then agree upon one of the three arbitrators so designated.

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(3) Unless the parties agree otherwise, the arbitration will take place in the county in which the insured resides and the rules of evidence applicable to the state courts where the arbitration is conducted shall apply.

(4) The arbitrator shall not be informed as to the amount or amounts collected by the insured by way of settlement or judgment prior to the conclusion of the arbitration. Disclosure of such information prior to the conclusion of the arbitration will result in disqualification of the arbitrator.

(5) Coverage issues shall be decided by a court of competent jurisdiction; the arbitrator shall decide issues of tort liability and damages only. The arbitrator shall first decide issues of liability and the apportionment of fault and, if fault is found, the amount of damages sustained by the insured.

(6) If the arbitrator's award to the insured is less than or equal to the total amount collected by the insured by way of settlements or judgments plus the amount of any settlement offer made by the uninsured motorist carrier at least fifteen (15) days prior to the arbitration, the insured will pay the arbitrator's fee. In the event the arbitrator's award to the insured exceeds the total amount collected by the insured by way of settlements or judgments plus the amount of any settlement offer made by the uninsured motorist carrier at least fifteen (15) days prior to the arbitration, the uninsured motorist insurance carrier will pay the arbitrator's fee.

() The uninsured motorist insurance carrier shall be entitled to credit for the total amount of damages collected by the insured from all parties alleged to be liable for the bodily injury or death of the insured whether obtained by settlement or judgment and whether characterized as compensatory or punitive damages.

() Nothing contained in this section shall prohibit or preclude the uninsured motorist insurance carrier and the insured or the insured's personal representative from settling the insured's uninsured motorist claim at any time and upon such terms and conditions as are acceptable to the parties.

() Notwithstanding the provisions of this section relating to binding arbitration, after receipt of both of the notices referred to in paragraphs (2) and (3) of the preceding subsection, the uninsured motorist insurance carrier, at its option, may elect to decline binding arbitration and preserve its subrogation rights, provided that within thirty (30) days after receipt of both of the aforesaid notices it pays the insured the full amount of the offer made by the liability insurance company or companies providing coverage to the party or parties seeking the release. Acceptance of said amount by the insured shall not operate as a release of the liability insurance carrier's insureds nor shall it prevent or preclude the insured from seeking additional compensation from the insured's uninsured motorist insurance carrier. Upon acceptance by the insured, the uninsured motorist insurance carrier shall be subrogated to the extent of its payment and further subrogated to the extent it is required to make further payments of compensatory damages under the uninsured motorist coverage of its policy. Upon final disposition of the case the liability insurance carrier or carrier shall reimburse the uninsured motorist insurance carrier in the amount of all policy limits applicable to the defendant or defendants on whose behalf the offer was made or in the amount of the judgment rendered against said defendant or defendants, whichever is less. In the event the judgment is in favor of said

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defendant or defendants the uninsured motorist insurance carrier shall not be entitled to reimbursement for any amounts paid its insured pursuant to this subsection. In the event the judgment exceeds the liability insurance coverage available to said defendant or defendants, the uninsured motorist insurance carrier shall be subrogated against said defendant or defendants to the extent of payments it is required to make in excess of such liability insurance coverage. The uninsured motorist insurance carrier shall be entitled to credit for the total amount of damages collected by the insured from all parties alleged to be liable for the bodily injury or death of the insured whether obtained by settlement or judgment and whether characterized as compensatory or punitive damages.

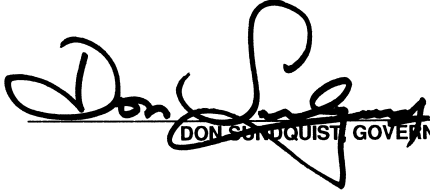
SECTION 2. This act shall take effect on October 1, 1999, the public welfare requiring it.

PASSED: May 27, 1999


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 17th day of June 1999


DON SUNDQUIST, GOVERNOR